SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1534

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: Department of Corrections

DATE: April 10, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cannon	Cannon	CJ	Favorable/CS
2.			APJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

This bill redesignates correctional institutions as prisons and community work centers as work release centers throughout many statutes and makes the following substantive changes:

- provides that the department may not credit time served that is awarded by the court in calculating the date on which the defendant will satisfy 85 percent of the court imposed sentence unless such credit is documented on the sheriff's certificate;
- requires additional documentation, such as date of arrest and time at liberty, when a prisoner is delivered to the department by the custodian of the local jail;
- eliminates the use of a disciplinary committee to hear charges of misconduct against an inmate and to make decisions on the forfeiture of gain-time and right to earn gain-time in the future, but rather replaces the committee with a single disciplinary hearing officer;
- conforms the statutory requirements concerning use of force investigations to the rules already promulgated by the department;
- limits the circumstances in which an investigation is conducted when use of force incidents are reported and changes from the local level to the central office level who is responsible for concurring or disapproving the use of force; and
- increases the amount the department may charge offenders who are electronically monitored on community control.

This bill substantially amends the following sections of the Florida Statutes: 921.161; 944.012; 944.02; 944.023; 944.026; 944.033; 944.09; 944.095; 944.10; 944.11; 944.115; 944.14; 944.151; 944.23; 944.24; 944.28; 944.31; 944.32; 944.35; 944.39; 944.402; 944.44; 944.45; 944.46; 944.47; 944.611; 944.613; 944.801; 944.803; 944.8031; 945.025; 945.0311; 945.091; 945.215; 945.21501; 945.21502; 945.27; 945.35; 945.6031; 945.6037; 945.72; 945.75; 946.002; 946.205; 946.25; 946.40; 946.504; 946.513; 413.051; 414.40; 948.03; 951.23; 943.09 and 958.04.

II. Present Situation:

85 Percent Minimum Requirement and County Jail Time Credits

In 1995, the Legislature amended s. 944.275, F.S., to require persons convicted of offenses committed on or after October 1, 1995, to have a maximum of ten days per month of incentive gain-time and stipulated that an inmate could not accrue gain-time in an amount that would cause the sentence imposed to end, terminate or expire prior to having satisfied 85 percent of the term imposed. Since the original law did not address the application of county jail credit when calculating the 85 percent minimum, the law was later amended in 1996 to allow credit for time served in a county jail prior to sentencing to be used when computing the 85 percent requirement.

Since 1996, and in reaction to unique sentencing and credit application associated with violation or probation resentencings, the department interpreted the statute to mean "credits awarded for the time physically incarcerated" and not discretionary credit the court sometimes awards for time served on probation or community control. In making this differentiation, the department reports that its attempts to verify dates of incarceration is time consuming, requiring multiple inquiries with a variety of criminal justice agencies and is many times unsuccessful.

Consequently, the inability to confirm a legitimate prior incarceration may result in an inmate serving additional time in violation of the court's order and possibly creating greater potential for erroneous early releases.

Under current practice, the department verifies credit awarded by the court by comparing the period of incarceration documented on the "Sheriff's Certificate" to the total amount of jail credit awarded by the court. If the credits match, no further research is required. However, if a credit does not match, the department contacts the county jail, sheriff's office, clerk's office, sentencing judge, or researches the department's probation database in an attempt to document and confirm credit for time physically incarcerated. If the department confirms the amount of time equal to or greater than credit awarded by the court, the inmate receives the court awarded credit toward the 85 percent minimum. Otherwise, the department applies the credit only for the number of dates verified in establishing the 85 percent minimum date. According to the department, on average approximately 35 percent of prison admissions require additional research to verify the dates physically incarcerated.

Use of a Disciplinary Team to Process Rule Violations by Inmates

Under current department rule (Chapter 33-601.302, Florida Administrative Code) disciplinary infractions which are deemed "major" are investigated by a disciplinary team consisting of at

least two staff persons one of whom shall be a correctional officer lieutenant or above who will be responsible for conducting a disciplinary hearing. The hearing is the procedure used to provide administrative due process requirements for inmates charged with violating the rules of the department. For those infractions characterized as minor, the hearing officer is charged with conducting the disciplinary hearing, However, if an inmate requests a hearing before a disciplinary team, the department rules requires the granting of such request.

Investigating Use of Force Incidents

Current law (s. 944.35(1), F.S.) and current department rule (Chapter 33-602.210, Florida Administrative Code), authorize employees to apply physical force only when and to the degree that it reasonably appears necessary to:

- defend himself or herself;
- prevent an escape;
- prevent damage to property;
- quell a disturbance;
- overcome an inmate's physical resistance to a lawful command;
- prevent a suicide; and
- allow medical treatment.

According to the department, there are about 3,500 use of force incidents reported per year. Of those, only about 6 percent result in a full investigation. Of those investigated, the department substantiates the improper use of force in about 7 percent.

According to s. 944.35, F.S., when the use of force occurs, those involved are required to prepare a report and the warden or the regional administrators must receive this report and must conduct an investigation *and* approve or disapprove the use of force. According the department, the investigation conducted has never been a true investigation, but rather a review process.

Contrary to law, the department in its rules authorizes a different and more centrally oriented process. By rule, when physical force is used, the warden and assistant warden are required to conduct a "preliminary review" for signs of excessive force and procedural deviations. By rule, the results of the review must be forwarded to the institutional inspector and then to the Inspector General in central office. The Inspector General, not the warden or assistant warden as required in law, approves the use of force action or disapproves it. The practical effect of this rule is for the review process to not be stopped at the institutional level.

According to the department, the approach to have a central authority in Tallahassee processing the use of force reports has the benefits of an objective third party review and uniformity in interpreting use of force issues. The new centralized approach implemented in its rule is mirrored after a similar one in Texas

Contrary to provisions in law, current practice is to not conduct investigations on all use of force incidences, but rather permit the Inspector General to either approve the use of force action or disapprove it based on its review and then refer it for investigation.

One Dollar Surcharge for Electronic Monitoring

Under current law (s. 948.09, F.S.) the department is authorized to impose a surcharge of one dollar per day to those persons being electronically monitored while placed on the community control program. This charge is far less than the department reported actual cost of $9.17 per day for units operating with a global positioning system and $2.79 for units operating with the less sophisticated radio frequency technology.

Nomenclature Changes

Throughout the Florida Statutes penal institutions operated by the Florida Department of Corrections are referred to as "correctional facilities," "correctional institutions," and "community correctional centers."

III. Effect of Proposed Changes:

Section 1 amends s. 921.161, F.S., requiring the department to not credit time served that is awarded by the court unless the award is documented on the sheriff's certificate. The department is permitted, however, to apply such additional credit for time served prior to sentencing if the court specifies on the judgment and sentence, or by separate court order, the dates and places of the defendant's additional incarceration.

This provision of the bill is sought by the department to alleviate their need to expend considerable resources to verify discrepancies with the court awards and the sheriff's certificate. Rather than the current process of verification conducted by the department, the bill requires the court to specify on the judgment and sentence, or by separate court order, the dates and places of the defendant's additional incarceration. While this remedy does lessen the department's workload, the legislation does increase the court's workload and may, according to the department, result in increased litigation since the legislation may result in awarding less jail credit than the court stipulated but failed to specify on the judgment and sentence, or by separate court order.

This section also places additional requirements on the custodian of the local jail when he or she delivers a prisoner to the department. Under current law, the custodian is not required to supply the date of arrest or if the prisoner is received from another jurisdiction, the date and name of the agency from which the prisoner is received. The bill requires this additional information be supplied. The bill also requires that the custodian provide greater detail in the dates and reasons for times the prisoner was at liberty. Particularly, the bill requires those dates and reasons for liberty between the date the prisoner was arrested and the date the prisoner was delivered to the department.

Section 2 amends s. 944.28, F.S., changing the process for forfeiture of gain-time. Under the current process codified in statute, a disciplinary committee receives the charge alleging misconduct, holds a hearing to determine the prisoner's guilt and decides whether all or part of the inmate's gain-time shall be forfeited. The bill eliminates reference to this committee and

instead designates a single "disciplinary hearing officer" with the responsibility to determine the forfeiture of gain-time and the right to earn gain-time in the future.

Section 3 amends s. 944.35, F.S., changing the way the department investigates use of force incidents. Under current law, each employee who applies physical force or was responsible for making decisions to apply physical force must prepare a report within 5 days of the incident. The report must be delivered to either the warden or the regional administrator. The bill removes the provision that provides the report to go to the regional director and instead provides that the "circuit administrator" or the warden may receive the use of force report.

By inserting the "circuit administrator" in the use of force statute, this expands the applicability of the statute to those incidents of use of force on probationers and others on community supervision.

Under current law, once the report is delivered, the warden or regional administrator is charged with conducting an investigation and determining whether to approve or disapprove the use of force. The requirement for this investigation to be conducted, and performed outside of central office is repealed by this legislation. The bill directs use of force reports to be forwarded to the Inspector General and for this office to conduct a "review" and make recommendations regarding the appropriateness or inappropriateness of the use of force. The bill requires that if the Inspector General finds that the use of force was appropriate, then the employee's report and the Inspector General's determination shall be forwarded to either the warden or circuit administrator within 5 days of the completion of the review. If the Inspector General finds that the use of force was inappropriate, he or she shall conduct a "complete investigation" into the incident and forward the findings of fact to the appropriate regional director for further action.

Under the current process, either the warden or the regional administrator must concur or disapprove the use of force determination from the investigation. The bill eliminates the requirement for the warden to concur or disapprove the findings. In the bill, it appears the findings of the Inspector General, a centralized authority, stand, regardless of opposition or concurrence from other department employees at the institution or circuit/regional level.

Sections 4 through 53 amend multiple statutes listed in the front of the analyses to make a variety of technical and nomenclature changes to alter the term "correctional institutions" to "prisons" and the term "community correctional" center to "work-release" center.

Section 54 amends s. 948.09, F.S., which permits the Department of Corrections to impose a surcharge on persons being electronically monitored as a result of placement on community control. Under current law the department may charge a $1 per day surcharge whereas the committee substitute would allow the department to charge an amount that "may not exceed the full cost of the monitoring services." This charge is far less than the department reported actual cost of $9.17 per day for units operating with a global positioning system and $2.79 for units operating with the less sophisticated radio frequency technology. The practical effect of this change is to allow the department to collect more fees to offset the costs of the electronic monitoring program.

Section 55 provides that the job titles designated for correctional officers and other correctional personnel shall not be impacted by the legislation that changes the term "correctional institution" to "prison."

Section 56 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a significant workload reduction associated with eliminating the need for audits to be conducted by the department to verify the credit for time served. The department reported in last fiscal year that 15 employees spent about an average of one hour per day researching credit for time served for a total of over 75 hours per week.

The sheriff's and sentencing courts, however, may experience an increase in workload as they attempt to comply with the additional reporting requirements specified in the bill.

Finally, there may be a minimal negative fiscal impact in that letterhead, envelopes, business cards, and signs at the effected institutions would become obsolete upon the passage of this law.

Aside from the impact on workload and negative fiscal impacts associated with the bill, the bill does have the potential to significantly increase the amount of money collected by the department pursuant to s. 948.09(2), F.S. The degree to which additional revenue will be generated from this bill is indeterminate and has not been projected by the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.